REMARKS

Status Summary

Claims 1-33 are pending in the present application. Claims 1-33 presently stand rejected. Claims 34 and 35 were previously canceled. With this amendment, claims 1, 12, 14 and 17 have been amended. Claims 11 and 13 have been canceled and the subject matter thereof has been incorporated into independent claim 1. New claims 36-39 have been added. Reconsideration of the application is respectfully requested.

Specification Objections

The title of the application stands objected to for being non-descriptive. Also, the specification is objected to for the use of the trademark "BECONASE."

The title has been amended herein to be more descriptive. Concerning the term "BECONASE," applicants note that the generic term for the drug follows the trademark. Further, as noted in MPEP § 608.01(v), each letter of the trademark may be capitalized or include a proper trademark symbol, such as [trade] or ® following the word. Applicants note that the term "BECONASE" was followed by the trademark register symbol, ®. In any event, the term "BECONASE" has been capitalized. Accordingly, applicants respectfully submit that the objections to the specification should be withdrawn.

Claim Objections

Claims 4 and 17 stand objected to because of certain informalities. Claim 4 has been amended to address the informalities therein. Claim 17 has been amended to address the antecedent basis issue with the "detent mechanism." Concerning the

"reading feature" of claim 17, applicants submit that the antecedent basis for "the reading feature" in line 4 of claim 17 appears in line 2 of claim 17. Accordingly, applicants respectfully submit that the objections to claims 4 and 17 should be withdrawn.

Claim Rejections – 35 U.S.C. § 102

Claims 1-3, 6, 8-13, 16 and 19 stand rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by International Patent Application Publication No. WO 98/30262 to Dmitrovic et al. (hereinafter "Dmitrovic"). These rejections are respectfully traversed.

Independent claim 1 recites a container having a first part, a second part and a hinge through which the first and second parts are hingeably connected so that the parts are hingeable relative to one another between a first position which places the container in a closed state and a second position which places the container in an open state. Claim 1 also recites that the first and second parts are pivotally connected so that the parts are able to be pivoted relative to one another to different angular positions. Claim 1 has been amended to recite that the first part is configured to be pivotal to a first angular position disposed behind the second part. Claim 1 has also been amended to recite that the first part and the second part are configured to nest together in a nesting state when the first part is in the first angular position.

Applicants respectfully submit that Dmitrovic does not anticipate independent claim 1 or the claims that depend therefrom as Dmitrovic does not disclose all the features of independent claim 1. For example, Dmitrovic does not disclose a container

having a first part configured to be pivotal to a first angular position disposed **behind** a second part and the first part and the second part configured to **nest together** in a nesting state when the first part is in the first angular position.

Dmitrovic discloses two embodiments of an inhalation device comprising a body **5**, **55** defining a reservoir **6**, **56** for medicament in the form of a powder, a mouthpiece **7**, **57** through which a user can inhale, and a dosing member **3**, **53** with at least one metering recess **22**, **65** formed therein. The dosing member **3**, **53** is moveable between a first position in which the at least one metering recess **22**, **65** communicates with the reservoir **6**, **56** to receive a dose of powder therefrom and a second position in which the at least one metering recess **6**, **56** communicates with the mouthpiece **57** to permit the user to inhale the dose. Dosing member **3**, **53** with metering recess **22**, **65** is mounted upon a lower body portion **9**, **59** which is pivotally connected to main body **5**, **55** such that it may rotate about the vertical axis of the device. Lower body portion **9**, **59** serves to allow rotation of the dosing member **3**, **53** while maintaining the same in axial alignment with a base **10**, **60**. It also urges the dosing member **3**, **53** into close contact with base **10**, **60**. A dust cover **33**, **63** is attached to lower body portion **9**, **59** through a pivot **34**, **64**.

In operation of both embodiments, the user initially shakes the device in a generally upward and downward motion while maintaining the device in a generally upright orientation as shown in Figure 3. Through the operation of shaking in both

embodiments, the powder in reservoir **6**, **56** is urged downwardly and to enter the metering recess **22**, **65**.

The user then opens dust cover **33**, **63**, as shown in Figure 4, and rotates the cover **33**, **63** which is connected to lower body portion **9**, **59** as shown in Figure 5, to move the dust cover **33**, **63** away from the mouthpiece **7**, **57** to allow access thereto and to bring the recess **22**, **65** into alignment with an aperture **8**, **66** leading to the mouthpiece **7**, **57**. The user knows when this position has been reached as the lower body portion **9**, **59** engages a stop (not shown) and will not move any further. The user then inhales through mouthpiece **7**, **57**. After inhalation, the user returns the lower body portion **9**, **59** to its initial position and closes the dust cover **33**, **63**.

In the device shown in Figures 1 and 2, the aperture **11** is radially offset by an angle of 90° about the vertical axis of the device from the aperture **8** at the inner end of the mouthpiece **7** to allow the dust cover **33** and lower body portion **9** to be moved through 90° for ease of access to mouthpiece **7**. Dmitrovic discloses that this angle can be substantially increased or slightly decreased according to the desired angle of rotation of the dust cover, lower body portion and dosing member.

Even though Dmitrovic does disclose that the dust cover can be rotated more than 90°, Dmitrovic does not disclose that the first part is configured to be pivotal to a first angular position disposed behind the second part.

Further, Dmitrovic does not disclose, teach or suggest that the first part and the second part of the container are configured to nest together in a nesting state when the

first part is in the first angular position. The Examiner asserts that the stop disclosed in Dmitrovic teaches a nesting state. Applicants respectfully disagree.

In this regard, the stop does not engage the dust cover **33**, **63**, but rather the stop only engages the lower body portion **9**, **59** as disclosed in Dmitrovic. The stop is not part of the dust cover. Therefore, Dmitrovic does not disclose, teach, or suggest that the lower body portion nests together with the dust cover. Dmitrovic only discloses that the stop, which is a separate component from both the lower body portion and the dust cover in the inhalation device, interacts with the lower body portion.

Further in this regard, a stop does not connote nesting, but rather merely suggests a component that prevents movement in at least one direction. Most likely, the stop is a post or stump that prevents the continued rotation of the lower body portion. Applicants respectfully submit that nesting has a specific meaning. As recited in claim 1, the phrase "the first part and the second part configured to nest together in a nesting state" means to one of ordinary skill in the art that one part is configured to fit into the other so that the first and second parts more compactly fit together. Dmitrovic does not disclose such nesting of parts or a nesting state.

For the reasons outlined above, applicants respectfully submit that Dmitrovic fails to disclose each and every feature recited by claim 1. Claims 2-3, 6, 8-10, 12, 16 and 19 depend from claim 1. As such, applicants respectfully submit that the rejection of claims 1-3, 6, 8-10, 12, 16 and 19 under 35 U.S.C. §102(b) should be withdrawn and the claims allowed at this time.

Claim Rejections – 35 U.S.C. § 103

Claims 4, 5, 7, 21, 24-27 and 30-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,062,214 to Howlett et al. (hereinafter, "Howlett") in view of Dmitrovic. Claims 14, 15, 17, 18 and 28-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Howlett in view of Dmitrovic and further in view of International Patent Publication No. WO 98/56444 to Rand et al. (hereinafter "Rand"). These rejections are respectfully traversed.

Claims 4, 5, 7, 14, 15, 17, 18, 21, and 24-33 depend from claim 1. Claim 1 is not rendered obvious by Howlett, Dmitrovic, or Rand, alone or in combination. Howlett discloses an inhaler for transferring to a patient a metered dose of medicament contained in a pressurized dispensing container. The inhaler includes a housing for receiving a pressurized dispensing container of medicament and a mouthpiece for insertion into the mouth or a user of the inhaler. An outlet in the housing communicates with the mouth piece via a duct ending in an outlet. At least one air inlet is provided for allowing air into the inhaler. The air inlet(s) is positioned downstream relative to the duct outlet. A restricted airflow passage is provided between the air inlet(s) and a location adjacent to the outlet of the duct. The inhaler also includes a vortex generating arrangement positioned in the restricted airflow passage, such that when in use a user inhales through the mouthpiece, a swirling airflow is created from the inlet(s) to the mouthpiece along the passage towards the duct outlet. The swirling airflow exits the restricted airflow passage to create a swirling airflow in the neck region of the duct outlet that swirls about a central axis of the duct outlet and the swirling airflow has a

component directed in reverse to the airflow from the duct outlet of the mouthpiece for reducing the velocity of medicament dispensed from the pressurized dispensing container via the duct and duct outlet.

Howlett further discloses a cover for the mouthpiece. The cover fits over the open mouthpiece and is connected by a flexible hinge portion to a cover attachment which fits in the lower part of the housing to attach the cover to the housing. When not in use, the cover is placed over the mouthpiece and when the inhaler is to be used, the cover is removed by hinging it away from the mouthpiece as shown in Figure 3.

Howlett does not disclose, teach, or suggest that a first part and a second part of a container are configured to nest together in a nesting state when the first part is in the first angular position. As described above, Dmitrovic also does not disclose, teach, or suggest that the first part and the second part of the container are configured to nest together in a nesting state when the first part is in the first angular position.

Further, the Examiner's rationale for combining Howlett and Dmitrovic would not provide motivation to one of ordinary skill in the art as suggested by the Examiner. The Examiner states that the hinged cover for the mouthpiece in Howlett could potentially come into contact with the face of the user during normal use. However, as clearly shown in Figure 3 of Howlett, the cover hangs in such a position that it will not interfere with the user operating the inhaler. Thus, the Examiner is using impermissible hindsight based on the disclosure of the present application to create this combination.

Rand does not overcome the significant shortcomings of both Howlett and Dmitrovic. Rand discloses a dispenser with a dose indicator therein. Rand does not

disclose, teach, or suggest, for example, that a first part and a second part of a container are configured to nest together in a nesting state when the first part is in the first angular position.

For at least the above reasons, it is respectfully submitted that Howlett, Dmitrovic, or Rand, alone or in combination, do not disclose, teach, or suggest all the features recited by claim 1.

Accordingly, since claims 4, 5, 7, 14, 15, 17, 18, 21, and 24-33 depend from claim 1, applicants respectfully submit that these claims are not rendered obvious by the cited references. Therefore, applicants respectfully submit that the rejection of claims 4, 5, 7, 14, 15, 17, 18, 21, and 24-33 under 35 U.S.C. § 103(a) should be withdrawn and the claims allowed at this time.

New Claims

New claims 36-39 have been added by this amendment as indicated above. Claims 36-39 depend from claim 1. For the same reasons as described above, claims 36-39 are not anticipated or rendered obvious by Howlett, Dmitrovic, or Rand, either alone or in combination. No new matter has been added.

CONCLUSION

In light of the above remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

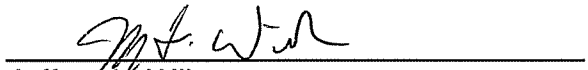
If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. **50-0426**.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: May 30, 2008 By: 

Jeffrey L. Wilson
Registration No. 36,058
Customer No: 25297
(919) 493-8000